

To: Marketplace Facilitator Work Group
From: Richard Cram, Multistate Tax Commission Staff
Date: September 28, 2018

Revised Survey Request—Issue #2 : Are registration and return filing requirements in conflict or duplicative? If the marketplace facilitator is required to register, collect and remit the sales/use tax on facilitated sales, then is there a need for the marketplace seller to register or report those same sales?

TaxCloud Comments- It would be helpful if the question made it clear that this applies to sales that are processed by that individual facilitator. Possibly change “on facilitated sales” to “on sales made through that facilitator”.

Please indicate your preference by marking “X” next to one of the alternatives listed below, or please provide your own suggestion under “No. 4 Other.” Also, please feel free to add any comments. Email your response (one response per state, other work group participants are welcome to submit responses as well) to rcram@mtc.gov by COB of Monday, October 8, 2018. The results of this survey will be summarized and distributed to the Work Group prior to the next Work Group telephonic meeting, to be held on October 10, 2018 at 2:30 pm EDT (call-in number 1-719-234-0214, passcode# 102826).

1.____ The marketplace facilitator is required to register, collect and remit sales/use tax on behalf of all of its marketplace sellers, without exception. However, the marketplace facilitator, at its discretion, can enter into an agreement with a marketplace seller allowing that marketplace seller to register, collect and remit sales/use tax on that seller’s sales.

TaxCloud Comments- We think it is appropriate that if a marketplace seller and a marketplace facilitator agree to let the seller collect and pay the tax that it should be allowed. It would be helpful if the response were modified so that it is clear that this applies to sales made through that individual facilitator. It is especially important to make this clarification since the language below refers to “all taxable sales to customers in this state.”

Example (RILA model statute):

A marketplace facilitator [doing business in the state under Section 1] is required to [collect and remit/pay] the [sales or use tax] on all taxable sales to customers in this state. However, a marketplace facilitator is not required to [collect and remit/pay] sales or use tax on a sale from a marketplace seller to a customer in this state if the marketplace facilitator elects to request and maintain a copy of the seller's registration to collect sales and use tax in this state. Nothing in this Section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into agreements with each other regarding fulfillment of the requirements of this [Chapter].

TaxCloud Comments- suggest replacing “all taxable sales to customers in this state” with “all taxable sales made through the facilitator to customers in this state”.

2.____ The marketplace facilitator is required to register, collect and remit sales/use tax on behalf of all of its marketplace sellers, unless a marketplace seller has opted to register, collect and remit sales/use tax on its sales made through that marketplace facilitator and has provided to the marketplace facilitator a copy of its registration with the state.

TaxCloud Comments- no objection to giving a marketplace seller this option.

Example (Minnesota):

(a) A marketplace provider shall collect sales and use taxes and remit them to the commissioner under [applicable statute] for all facilitated sales for a retailer, and is subject to audit on the retail sales it facilitates unless either:

(1) the retailer provides a copy of the retailer's registration to collect sales and use tax in this state to the marketplace provider before the marketplace provider facilitates a sale; or (2) upon inquiry by the marketplace provider or its agent, the commissioner discloses that the retailer is registered to collect sales and use taxes in this state.

(b) Nothing in this subdivision shall be construed to interfere with the ability of a marketplace provider and a retailer to enter into an agreement regarding fulfillment of the requirements of this chapter.

Minnesota Comments:

NOTE: Minn. Stat. § 297A.83 requires anyone required to collect and remit sales taxes to obtain a sales tax permit by registering with the Minnesota Department of Revenue. A marketplace provider must collect and remit sales taxes for all facilitated sales for a marketplace seller unless the marketplace seller is already registered to collect and remit. The marketplace provider can ask either the marketplace seller or the Minnesota Department of Revenue for confirmation of the marketplace seller's

registration status. But note that the marketplace provider and a registered marketplace seller can also agree that the marketplace provider will collect and remit sales taxes on all sales facilitated through the marketplace provider.

3.____ The marketplace facilitator is required to register, collect and remit sales/use tax on behalf of all of its marketplace sellers, without exception.

Example:

A marketplace provider shall collect state and local sales and use tax on all sales made through the marketplace to purchasers in this state whether or not the marketplace seller:

- (1) has or is required to have a sales and use tax permit, or
- (2) would have been required to collect and remit state and local sales and use tax had the sale not been made through the marketplace provider.

Georgia Comments:

Georgia is in favor of Option 3 – a platform being required to collect on behalf of all of its sellers. If optional, the burden of keeping track of who's in and who's out would be considerable. Requiring a platform to collect for all sellers is also important for the international compliance issue, which affects domestic compliance. If I as a seller suspect that I'm competing with overseas sellers that should be collecting but are not, I'll weigh compliance risk against the competitive disadvantage and perhaps be less likely to opt to register and collect.

Kentucky Comments:

Kentucky would also recommend that there be additional language:

1. Requiring the marketplace facilitator to provide its marketplace seller a certificate documenting the amount of tax remitted on behalf of the marketplace seller; and
2. Requiring the marketplace seller to also collect and remit the tax if the marketplace seller also makes sales through another website and gross receipts from all sales to the state exceed \$100,000 or 200 or more transaction occur in the state.

Pennsylvania Comments: This requirement is for marketplace facilitators who have nexus (maintain a place of business) in the state. This standard for physical presence nexus could likely be extended to application for marketplace facilitators with (just) economic nexus.

TaxCloud Comments- we support the ability of a seller and a facilitator to agree to have the seller collect. We have concerns with a state prohibiting two private parties from entering into an agreement regarding these responsibilities.

4.____Other: [insert suggested language; if taken from existing statutory language, please provide the source]

TaxCloud- it is critical that the responsibilities regarding collecting and remitting tax on transactions through different platforms be clear. The suggestions above clarify that marketplace facilitators are only responsible for transactions that they process.

Even if it is clear that marketplace facilitators only collect and remit for the transactions that they process, the marketplace seller needs to know which transactions the facilitator is reporting (it should be noted that an individual seller may utilize multiple facilitators with each facilitator having a reporting requirement). This will enable the seller ensure that tax is being reported correctly and to only self report on transactions that have not been reported by a facilitator.

We are currently working with marketplace facilitators to see if we can agree on language to 1) clarify who is responsible for the collection and remittance of tax on transactions made through all platforms, and 2) ensure that a seller receives the information it needs to accurately file returns on the transactions that they are responsible for.

We recognize that this needs to be completed quickly and are hoping to have language available for the next meeting of the committee.

Submitted by Jerry Johnson on behalf of TaxCloud

Diane Yetter Comments:

- If a state requires marketplace facilitator to collect the tax, marketplace seller shall not be required to include sales reported by the marketplace facilitator in its periodic sales and use tax returns with the state.
- If a state requires marketplace facilitator to collect tax, these sales dollars and transactions shall be excluded from the determination as to whether the marketplace seller's sales exceed any economic nexus threshold standards for registration requirements.